AF/2833

BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE
ON APPEAL TO THE BOARD OF APPEALS

In re Application of: Jerry A. Jenks	)	Date:	January 31, 2003
Serial No.: 09/833,978	)	Group Art Unit:	2833
Filed: 04/12/2001	)	Examiner:	Luebke, R.S.
Title: Electrical Interrupt Switch	)		

#11
2/25/03
Jwm.

CERTIFICATE OF SERVICE

I hereby certify that this correspondence is being deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Commissioner of Patents and Trademarks, Washington, D.C. 20231.

Terry Lakos — 2/7/03

Name: Terry LAKOS — Date

BRIEF ON APPEAL

Hon. Commissioner of Patents and Trademarks
Washington, D.C. 20231

Dear Sir:

This is an appeal from the Final Rejection, dated October 28, 2002 for the above identified application.

REAL PARTY IN INTEREST

The party(ies) named in the caption of this brief are the real parties of interest in this appeal.

RELATED APPEALS AND INTERFERENCES

There are no other appeals or interferences known to appellant, appellant's legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in this pending appeal.

STATEMENT OF AMENDMENTS

A supplemental amendment was filed January 31, 2003 to address objections to the specifications, claims, and drawings that resulted in a rejection of Claim 10 under 35 U.S.C. 112. .

SUMMARY OF INVENTION

As described in the specification page 5, line 8 through page 7, line 1, FIG. 1 shows an electrical interrupt switch 10 according to the present invention, is provided that allows for the disconnection of electrical plug-connected equipment without removing the plug from the receptacle. It is anticipated that such a switch 10 could be made available for use on grounded or ungrounded electrical systems. The switch 10 has a housing 12 that has a compact overall outer dimension approximately one inch high, one inch wide and three inches long. Extending outward from one end of the housing 12 are male blade connectors 14 sized for a standard 120 VAC plug which connects to common 120 VAC outlets found in homes and business. Additionally, a ground prong 15 could be made available depending on the model. Opposite the blade connectors 14 are corresponding receptacle connectors 16 to allow for the connection

of a conventional electrical power cord. Accessible through the upper portion of the housing 12 is a rocker switch 18 that allows the user to open or close the electrical circuit in the manner described below.

Referring now to FIG. 2 and FIG. 3, the housing pivotally supports the rocker switch 18 about a pivoting axle 40. Having a pair of flat, acutely intersecting touching surfaces 42 about the upper portion of the rocker switch 18, the lower portion is a cam-shaped arcuate body 44. A first electrically conductive contact 46 is supported along one side of the body 44; a second electrically conductive contact 48 is affixed at one end in electrical communication with a receptacle connectors 16 and at the opposite end is spring urged against one side of body 44 such that as rocker switch 18 is articulated, electrical continuity is created between the receptacle connector 18, through the second contact 48 to the first contact 46 to a blade connectors 14.

It is envisioned that a parallel switching conductors of identical configuration is mounted about the body 44 such that each receptacle connector 16 is switched between electrical continuity to a respective blade connector 14.

Should a switch 10 be configured for receiving a ground connector 16b, a ground prong 15 would be in continuous electrical communication therewith such that ground continuity is not effected by position or operation of the rocker switch 18.

ISSUES

In the office action dated10/28/2002, the examiner rejected:

Claim 1 under 35 U.S.C. 102(b) as being anticipated by Freeman, U. S. Patent

of a conventional electrical power cord. Accessible through the upper portion of the housing 12 is a rocker switch 18 that allows the user to open or close the electrical circuit in the manner described below.

Referring now to FIG. 2 and FIG. 3, the housing pivotally supports the rocker switch 18 about a pivoting axle 40. Having a pair of flat, acutely intersecting touching surfaces 42 about the upper portion of the rocker switch 18, the lower portion is a cam-shaped arcuate body 44. A first electrically conductive contact 46 is supported along one side of the body 44; a second electrically conductive contact 48 is affixed at one end in electrical communication with a receptacle connectors 16 and at the opposite end is spring urged against one side of body 44 such that as rocker switch 18 is articulated, electrical continuity is created between the receptacle connector 18, through the second contact 48 to the first contact 46 to a blade connectors 14.

It is envisioned that a parallel switching conductors of identical configuration is mounted about the body 44 such that each receptacle connector 16 is switched between electrical continuity to a respective blade connector 14.

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ISSUES

In the office action dated10/28/2002, the examiner rejected:

Claim 1 under 35 U.S.C. 102(b) as being anticipated by Freeman, U. S. Patent

No. 2,706,225;

Claims 2-4, 6, 7, 9 and 12 under 35 U.S.C. 103(a) as being anticipated by Freeman in view of Osika, U.S. Patent No. 4,463,228 and

Claims 7-11 under 35 U.S.C. 103(a) as being anticipated by Freeman in view of Osika and in view of Lockard, U.S. Patent No. 3,974,347.

Therefore, the issues on appeal are:

1. Is claim 1 anticipated under 35 U.S.C. 102(b) by Freeman?
2. Are claims 2-4, 6, 7, 9 and 12 anticipated under 35 U.S.C. 103(a) by Freeman in view of Osika ?

and

3. Are claims 7-11 anticipated under 35 U.S.C. 103(a) by Freeman in view of Osika and in view of Lockard?

GROUPING OF CLAIMS

Claims 1 forms a first group of claims; Claims 2-4, 6, 7, 9 and 12 form a second group of claims; and Claims 7-11 form a third group of claims. Each group of claims can stand or fall independently of one another.

ARGUMENT

1. Rejections under 35 U.S.C. 112

The disclosure was objected to due to typographic and gramatical errors in the

specification, claims, and drawings.

It is felt that the changes made per the Supplemental Amendment address these objections, making further argument moot.

2. Rejections under 35 U.S.C. 102

The Examiner rejected claim 1 under 35 U.S.C. 102(b) as being anticipated by Freeman, U. S. Patent No. 2,706,225.

In undertaking to determine whether one reference anticipates another under 35 U.S.C. § 102(b), a primary tenet is that the reference must teach every element of the claim. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Several differences exist between the invention claimed in Freeman and the currently claimed invention.

The present invention uses a plug incorporated into a housing, an electrical receptacle opposite to the plug and a rocker switch. Freeman has a plug and a rocker switch. However, and unlike the present invention, the plug is not incorporated into the housing, but instead extends from an extension cord (26). Additionally, the rocket switch in Osika requires the use of a locking key (21) for movement of the switch to either the on or off position. Therefore, and in light of the noted differences between

the present invention and Freeman, the examiner's rejection of Claim 1 under 35 U.S.C. § 102(b) is inappropriate.

Accordingly, the rejection by the examiner under 35 U.S.C. 102(b) is inappropriate.

3. Rejections under 35 U.S.C. 103

The examiner respectfully rejected 2-4, 6, 7, 9 and 12 as being anticipated under 35 U.S.C. 103(a) by Freeman in view of Osika and claims 7-11 as anticipated under 35 U.S.C. 103(a) by Freeman in view of Osika and in view of Lockard. However, several differences exist between the present invention and those in Freeman, Osika, and Lockard. These include male blade connectors opposite female receptacles, and inclusion of a housing mounted switch (as opposed to a remotely actuated toggle arms).

Some of the differences between Freeman and the present invention have been noted above. the present invention claims a ground prong extending from a first end of an electrical interrupt switch. Freeman does not have ground prongs. Osika does not have a ground *prong* extending from a first end. Osika has an internal ground wire and terminal, and has a receptacle for receiving a ground prong, but Osika fails to disclose a ground prong extending from a first end that is capable of insertion into an electrical outlet.

As to Claim 12, the present invention claims a ground prong in electrical communication with a ground receptacle. Osika discloses a ground receptacle communicating with an internal

ground conductor, and not an external ground prong.

As to Claim 8, the present invention claims a rocker switch having a pair of flat and intersecting surfaces. Lockard has a knob (30) having an uneven surface, wherein the surface has notches and flares.

As to Claim 9, the present invention claims a rocker switch with a cam-shaped arcuate body. The examiner referenced an arcuate portion (22a) of a contact (8) in Lockard as rendering obvious the limitations of Claim 9. However, the arcuate portion of the contact are not similar, as the contact bridges the electrical communication between 46a and 48a. Further, the knob (30) does not have an arcuately shaped portion at its lower portion.

As to Claim 10, the present invention claims first and second electrical conductive contacts, wherein the first and second contacts are urged against one another by the switch to complete an electrical circuit. In Lockard, the opposite is true. The contacts 46a and 48a are actually separated, and a bottom portion (25) and a beam (26) bridge the separation of the contacts. Thus, this reference actually teaches away from the present invention as claimed in Claim 10.

As to Claim 11, the present invention claims a set of parallel switching conductors capable of supplying electrical current to corresponding blade connectors. However, Lockard does not provide switchable electrical continuity between receptacles and blade connectors. As can best be discerned from Lockard, there are no receptacles for insertion of an electrical plug.

It is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. However, by way of additional argument

application wishes to point out that it is well established at law that for a proper *prima facie* rejection of a claimed invention based upon obviousness under 35 U.S.C. 103, the cited references must teach every element of the claimed invention. Further, the initial burden of presenting a prima facie case of obviousness rest s on the examiner. In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed.Cir. 1992). A proper analysis under 35 U.S.C. 103 requires, inter alia, consideration of two factors:

1. Whether the prior art would have suggested to those of ordinary skill in the art that they should have made the claimed composition or device, or carried out the claimed process; and
2. Whether the prior art would have revealed a reasonable expectation of success in doing so.

See In re Dow Chem. Co., 837 F.2d 469, 473, 5 USPQ2d 1529, 1531 (Fed.Cir. 1988). Both the suggestion and the reasonable expectation of success must be found in the prior art, not in the applicant's disclosure. Id.

Also, when determining the scope of teaching of a prior art reference, the Federal Circuit has declared:

> "[t]he mere fact that the prior art could be so modified should not have made the modification obvious unless the prior art suggested the desirability of the modification." (Emphasis added). In re Gordon, 221 USPQ 1125, 1127 (Fed. Cir. 1984).

There is no suggestion as to the desirability of any modification of the references to describe the present invention. An analysis of the disclosures within the cited references fails to cite every element of the claimed invention. In cases such as this, i.e., when the prior art references require a selective combination to render obvious a

subsequent claimed invention, there must be some reason for the selected combination other than the hindsight obtained from the claimed invention itself. Interconnect Planning Corp v. Feil, 774 F.2d 1132, 227 USPQ 543 (CAFC 1985).

The examiner seems to suggest that it would be obvious for one of ordinary skill to attempt to produce the currently disclosed invention. However, there must be a reason or suggestion in the art for selecting the design, other than the knowledge learned from the present disclosure. In re Dow Chemical Co., 837 F.2d 469, 5 USPQ.2d 1529 (CAFC 1988); see also In re O'Farrell, 853 F.2d 894, 7 USPQ 2d 1673 (CAFC 1988).

To summarize, it appears that only in hindsight does it appear obvious to one of ordinary skill in the pertinent art to combine the present claimed and disclosed combination of elements. To reject the present application as a combination of old elements leads to an improper analysis of the claimed invention by its parts, and instead of by its whole as required by statute. Custom Accessories Inc. v. Jeffery-Allan Industries, Inc., 807 F.2d 955, 1 USPQ 2d 1197 (CAFC 1986); In re Wright, 848 F.2d 1216, 6 USPQ 2d 1959 (CAFC 1988).

Applicant feels that, at best, the examiner has cited a number of references variously containing some of the limitations in applicants claim; however, these references and the limitations for which they were cited are combined piecemeal, without any suggestion or motivation for their combination and without regard to the purpose of the applicant's invention. This is similar to the scenario in *In re Blammer,* Civ. App. No. 93-1108, slip op. At 3-4 (Fed. Cir. Sept. 21, 1993)(unpublished), wherein the examiner in that case rejected an application as obvious in light of twelve

references. The Board of Appeals in that matter concluded that the invention would have been obvious in light of only four of the references, which was also overturn by the Federal Circuit.

It is felt that the differences between the present invention and all of these references are such that rejection based upon 35 U.S.C. 103, in addition to any other art, relevant or not, is also inappropriate. Accordingly, the reversal of the Examiner by the honorable Board of Appeals is respectfully solicited.

Respectfully submitted,

John D. Gugliotta
Registration No. 36,538
Attorney for Appellant
202 Delaware Building
137 South Main Street
Akron, OH 44308
(330) 253-5678
Facsimile (330) 253-6658

APPENDIX

THE CLAIMS ON APPEAL

The claims on appeal are as follows:

1. An electrical interrupt switch for allowing disconnection of electrical plug-connected equipment without removing an electrical plug from a receptacle, said switch comprising:

a 120 VAC plug at a first end;

a corresponding receptacle at a second end for allowing connection of an electrical power cord, said receptacle in rigid mechanical contact with said plug; and

a rocker switch that allows a user to interrupt flow of electrical current.

2. An electrical interrupt switch comprising:

a housing having a first end opposite a second end and a top surface;

a pair of male blade connectors extending outward from said first end;

a ground prong extending outward from said first end;

female receptacle connectors penetrating said second end opposite said male blade connectors;

a ground receptacle in electrical communication with said ground prong; and

switch means accessible through said top surface for allowing a user to open or close an electrical circuit between said male blade connectors and said female receptacle connectors, respectively.

3. The electrical interrupt switch of Claim 2, wherein said male blade connectors are sized for a 120 VAC plug which connects to 120 VAC outlets.

4. The electrical interrupt switch of Claim 2, wherein said female receptacle connectors allow for the connection of an electrical power cord.

6. The electrical interrupt switch of Claim 2, wherein said housing has a compact overall outer dimension one inch high, one inch wide and three inches long.

7. The electrical interrupt switch of Claim 2, wherein said switch means comprises a rocker switch, and wherein said housing pivotally supports said rocker switch about a pivoting axle, thereby providing said rocker switch with angular movement for opening or closing said electrical circuit between conductive contacts.

8. The electrical interrupt switch of Claim 7, wherein said rocker switch further comprises a pair of flat and intersecting surfaces about an upper portion of said rocker switch.

9. The electrical interrupt switch of Claim 7, wherein a lower portion of said rocker switch comprises a cam-shaped arcuate body.

10. The electrical interrupt switch of Claim 9, wherein said conductive contacts comprise:

a first electrically conductive contact supported along a first side of said body;

a second electrically conductive contact having a first end opposite a second end, said first end in electrical communication with said receptacle connectors and said second end biased toward a second side of said body such that as said rocker switch is articulated, said first electrical conductive contact engages said blade connectors at one end and engages said second electrical conductive contact at an opposite end, thereby creating electrical continuity between said receptacle connector, through said second electrical conductive contact, to said first electrical conductive contact and to said blade connector.

11. The electrical interrupt switch of Claim 10, wherein parallel switching conductors of identical configuration are mounted about said body such that each receptacle connector is switchable to electrical continuity of a respective blade connector.

12. The electrical interrupt switch of Claim 2, further comprising a ground prong in continuous electrical communication with a ground receiving receptacle such that ground continuity is not influenced by position or operation of said switching means.